

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

Order No. O-13-028

FINAL AGENCY ORDER

IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF THE NORTH
RIVER INSURANCE COMPANY

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance ("Commissioner") as a result of a market conduct examination ("MCE") conducted by the Colorado Division of Insurance ("Division") of The North River Insurance Company ("Respondent"), pursuant to §§ 10-1-203, 10-1-204, and 10-1-205, as well as § 10-3-1106, C.R.S.

The Commissioner has fully considered and reviewed the Verified MCE Report ("Report") dated August 6, 2012, the written submissions and rebuttals provided September 4, 2012, by Respondent in response to the Report, and the recommendations of staff.

The Report covers the examination period of January 1, 2009, through December 31, 2009.

The Commissioner makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. At all relevant times during the examination, the Respondent was licensed by the Division to conduct business as a Bail Bond insurer in the State of Colorado.
2. On June 18, 2012, in accordance with §§ 10-1-203, 10-1-204, and 10-1-205, as well as § 10-3-1106, C.R.S., the Division completed an MCE of the Respondent. The period of examination was January 1, 2009, through December 31, 2009.
3. In conducting the MCE, the examiners observed those guidelines and procedures set forth in the 2010 Market Regulation Handbook adopted by the National Association of Insurance Commissioners.
4. The MCE was completed on June 18, 2012. Pursuant to § 10-1-205(2), C.R.S., the market conduct examiners prepared the Verified Written Report ("Report"), which the

Examiner-in-Charge timely filed with the Division, under oath, on August 6, 2012. The Report was subsequently timely transmitted to Respondent on August 6, 2012.

5. On August 6, 2012, the Division provided the Respondent with written notification that it was afforded a right to file, within thirty (30) days, written submissions or rebuttals with respect to any matter contained in the Report.
6. Pursuant to § 10-1-205(1), C.R.S., the Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons who were examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
7. On September 4, 2012, Respondent timely filed written submissions and rebuttals to the Report as provided for at § 10-1-205(2), C.R.S.
8. The Commissioner has fully considered and reviewed the Report, Respondent's September 4, 2012, submissions and rebuttals to the Report, and the recommendations of staff.
9. The MCE has proceeded under the substantive terms, authority and procedures set forth at §§ 10-1-203, 10-1-204 and 10-1-205, C.R.S., as well as § 10-3-1106, C.R.S.

CONCLUSIONS OF LAW AND ORDER

10. Pursuant to § 10-1-205(3)(a), C.R.S., the Commissioner adopts the Report as modified ("Modified Report"). The Commissioner has modified the Report as follows: One (1) form was removed from Issue E3, resulting in one (1) form remaining.
11. The Commissioner finds the Respondent operated in violation of Colorado insurance law and hereby orders the Respondent to take necessary and appropriate action, as set forth herein, to cure such violations.
12. The Commissioner considered the options available under § 10-1-205(3)(b) and (c), C.R.S. After such consideration the Commissioner did not reject the Report or direct the examiners to reopen the examination for the purposes of obtaining additional data, documentation, or information, or to refile the Report pursuant to subsection (1) of § 10-1-205, C.R.S. The Commissioner finds an investigatory hearing, pursuant to § 10-1-205(3)(c), C.R.S., for the purposes of obtaining additional documentation, data, information, and testimony, is not warranted.
13. A copy of the Modified Report is attached to the Final Agency Order and is incorporated herein. The August 6, 2012, Report provided Respondent with the opportunity to show cause as to why it should not be found in violation of the Colorado

insurance laws for all issues identified below. Respondent provided its submission and rebuttal on September 4, 2012.

14. Respondent indicated in its submission and rebuttal that it has no producers actively writing bail bond business in Colorado. Notwithstanding the Respondent's current lack of activity in the bail bond business in Colorado, no later than April 5, 2013, the Respondent shall submit a detailed written compliance plan ("Compliance Plan") to the Division identifying the corrective actions Respondent will take to comply with any outstanding issues set forth below should Respondent resume writing bail bond business in Colorado.
15. Issue D1: Failure, in some instances, to register with the Commissioner the use of any assumed, trade or fictitious name prior to using the name. This failure constitutes a violation of § 10-2-701, C.R.S. and Colorado Insurance Regulation 1-2-10 during the examination period. The Respondent shall provide to the Division in its Compliance Plan the procedures it will implement to ensure that its agents register with the Commissioner, prior to use, any assumed, trade or fictitious name, as required by current Colorado insurance law.
16. Issue D2: Failure, in some instances, to record the collateral receipt number in the daily bond register. This failure constitutes a violation of § 12-7-108, C.R.S., and Colorado Insurance Regulation 1-2-14 during the examination period. The Respondent is not required to address this issue in its Compliance Plan as this is no longer a requirement of Colorado insurance law.
17. Issue D3: Failure, in some instances, to record the premium receipt number in the daily bond register. This failure constitutes a violation of § 12-7-108, C.R.S., and Colorado Insurance Regulation 1-2-14 during the examination period. The Respondent is not required to address this issue in its Compliance Plan as this is no longer a requirement of Colorado insurance law.
18. Issue E1: Failure of the Company's collateral receipts to include all required information. This failure constitutes a violation of §§ 12-7-108 and 12-7-109, C.R.S., and Colorado Insurance Regulation 1-2-14 during the examination period. The Respondent shall provide to the Division in its Compliance Plan the procedures it will implement to ensure that correct forms will be used.
19. Issue E2: Failure of the Company's premium receipts to include all required information. This failure constitutes a violation of § 12-7-108, C.R.S., and Colorado Insurance Regulation 1-2-14 during the examination period. The Respondent shall provide to the Division in its Compliance Plan the procedures it will implement to ensure that correct forms will be used.
20. Issue E3: Failure of the Company's bail bond applications and contracts to include all required information. This failure constitutes a violation of §§ 10-1-128, 12-7-108, and

12-7-109, C.R.S., and Colorado Insurance Regulation 1-2-14 during the examination period. The Respondent shall provide to the Division in its Compliance Plan the procedures it will implement to ensure that correct forms will be used.

21. Issue F1: Failure to establish underwriting criteria to support the premium charged and to apply such criteria uniformly across all underwritten risk. This failure constitutes a violation of §§ 10-3-1104, 10-4-403, 12-7-108 and 12-7-110.5, C.R.S., and Colorado Insurance Regulation 1-2-15 during the examination period. The Respondent was required to provide written evidence to the Division that it had established underwriting criteria sufficient to ensure that similarly situated individuals and risks are treated uniformly in the rates that they are charged, and that it had implemented procedures to ensure that its bail bond agents charge the appropriate filed premium based on Respondent's established underwriting criteria in compliance with current Colorado insurance law. The Division's records indicate the Respondent has complied with the corrective actions required for compliance with this issue. The Respondent is not required to address this issue in its Compliance Plan
22. Issue F2: Failure to file a rate that complies with Colorado insurance law. This failure constitutes a violation of §§ 10-4-403, 12-7-108 and 12-7-110.5, C.R.S., and Colorado Insurance Regulation 1-2-15 during the examination period. The Respondent was required to provide written evidence to the Division that it had filed a rate that complies with Colorado insurance law and had implemented procedures to ensure that its agents charge rates in conformity with current Colorado insurance law. The Division's records indicate the Respondent has complied with the corrective actions required for compliance with this issue. The Respondent is not required to address this issue in its Compliance Plan.
23. Issue G1: Failure, in some instances, to include all required information on the executed indemnity agreements. This failure constitutes a violation of § 12-7-108, C.R.S., and Colorado Insurance Regulation 1-2-14 during the examination period. The Respondent shall provide to the Division in its Compliance Plan the procedures it will implement to ensure that all executed indemnity agreements will include all information required by current Colorado insurance law.
24. Issue G2: Failure, in some instances, to issue a separate indemnity agreement for each particular bail bond. This failure constitutes a violation of § 12-7-108, C.R.S., and Colorado Insurance Regulation 1-2-14 during the examination period. The Respondent shall provide to the Division in its Compliance Plan the procedures it will implement to ensure that its agents issue a separate indemnity agreement for each particular bail bond as required by current Colorado insurance law.
25. Issue G3: Failure, in some instances, to notify the defendant or third-party indemnitor that the promissory notes received had been satisfied. This failure constitutes a violation of § 12-7-108, C.R.S., and Colorado Insurance Regulation 1-2-14 during the examination period. The Respondent shall provide to the Division in its Compliance

Plan the procedures it will implement to ensure that its agents meet the requirements of current Colorado insurance law with regard to the satisfaction of promissory notes.

26. Issue G4: Failure, in some instances, to issue a separate promissory note for each particular bail bond issued. This failure constitutes a violation of § 12-7-108, C.R.S., and Colorado Insurance Regulation 1-2-14 during the examination period. The Respondent shall provide to the Division in its Compliance Plan the procedures it will implement to ensure that a separate promissory note for each particular bail bond is issued, as required by current Colorado insurance law.
27. Issue G5: Failure, in some instances, to include all required information on the collateral receipts. This failure constitutes a violation of § 12-7-108, C.R.S., and Colorado Insurance Regulation 1-2-14 during the examination period. The Respondent shall provide to the Division in its Compliance Plan the procedures it will implement to ensure that all Collateral Receipts include all information required by current Colorado insurance law.
28. Issue G6: Failure, in some instances, to report collateral to surety within twenty (20) days of taking collateral. This failure constitutes a violation of § 12-7-107, C.R.S., during the examination period. The Respondent is not required to address this issue in its Compliance Plan as this is no longer required by Colorado insurance law.
29. Issue G7: In some instances, issuing more than one receipt for each item of collateral received for a particular bail bond. This failure constitutes a violation of § 12-7-108, C.R.S., and Colorado Insurance Regulation 1-2-14 during the examination period. The Respondent shall provide in its Compliance Plan the procedures it will implement to ensure that the Company's agents issue only one collateral receipt for each item of collateral received for a particular bond as required by current Colorado insurance law.
30. Issue G8: Failure, in some instances, to include all required information on the premium receipts. This failure constitutes a violation of § 12-7-108, C.R.S., and Colorado Insurance Regulation 1-2-14 during the examination period. The Respondent shall provide to the Division in its Compliance Plan the procedures it will implement to ensure that all required information is included on its premium receipts, as required by current Colorado insurance law.
31. Issue G9: In some instances, issuing more than one receipt for each premium payment received for a particular bond. This failure constitutes a violation of § 12-7-108, C.R.S., and Colorado Insurance Regulation 1-2-14 during the examination period. The Respondent shall provide to the Division in its Compliance Plan the procedures it will implement to ensure that its agents issue only one receipt for each premium payment as required by current Colorado insurance law.
32. Issue G10: Failure, in some instances, to submit premium collected by bail bonding agents to North River in a timely manner. This failure constitutes a violation of § 10-2-

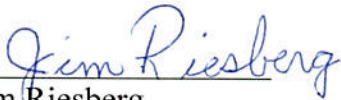
704, C.R.S., and Colorado Insurance Regulation 1-2-1 during the examination period. The Respondent shall provide to the Division in its Compliance Plan the procedures it will implement to ensure the bail bonding agent remits bond premium in conformity with his/her contract with Respondent, as required by current Colorado insurance law.

33. Issue G11: Failure, in some instances, to include all required information on the disclosure statement. This failure constitutes a violation of § 12-7-108, C.R.S., and Colorado Insurance Regulation 1-2-14 during the examination period. The Respondent shall provide to the Division in its compliance Plan the procedures it will implement to ensure that all required information is included on its disclosure statements as required by current Colorado insurance law.
34. Issue G12: Failure, in some instances, to issue a separate disclosure statement for each particular bail bond. This failure constitutes a violation of § 12-7-108, C.R.S., and Colorado Insurance Regulation 1-2-14 during the examination period. The Respondent shall provide to the Division in its Compliance Plan the procedures it will implement to ensure that its agents issue a separate disclosure statement for each particular bail bond as required by current Colorado insurance law.
35. The issues and violations described in paragraphs 15 through 34 above are grounds for penalties to be levied pursuant to § 10-1-205(3)(d), C.R.S. The Commissioner has ordered a civil penalty in the amount of eighty-five thousand and no/100 dollars (\$85,000.00) for the cited violations of Colorado law. However, the Commissioner hereby stays \$28,000.00 of the \$85,000.00 civil penalty based upon Respondents efforts at compliance. The stayed portion of the civil penalty shall become due and payable if the Commissioner subsequently determines that Respondent will not be in substantial compliance as a result of Respondent's Compliance Plan and Respondent resumes writing business in Colorado. The \$57,000.00 penalty shall be assessed a surcharge of 10% of the penalty amount up to a maximum of \$7,500.00, pursuant to 24-34-108, C.R.S., for a total balance due of sixty-two thousand seven hundred dollars (\$62,700.00). The surcharge shall be used to fund the development, implementation and maintenance of a consumer outreach and education program. The penalty and surcharge shall be due to the Division no later than thirty (30) days from the date of this Final Agency Order.
36. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Final Agency Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the Report, as modified and adopted by this Final Agency Order, dated October 5, 2012.
37. This Final Agency Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Final Agency Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Final Agency Order may result in additional actions,

penalties and sanctions, as provided for by law. Copies of the Modified Report and this Final Agency Order will be made available to the public no earlier than thirty (30) days after the date of this Final Agency Order, subject to the requirements of § 10-1-205, C.R.S.

38. Pursuant to § 10-1-205(4)(a), C.R.S., this Final Agency Order shall be considered a final agency decision. Review of such decision may be sought in the District Court in and for the City and County of Denver and shall be governed by the "State Administrative Procedure Act," Article 4 of Title 24, C.R.S.
39. Pursuant to § 10-1-205(4)(e), C.R.S., the civil penalty assessed in this Final Agency Order may be appealed directly to the Colorado Court of Appeals within the applicable time frames of the Colorado Appellate Rules.

WHEREFORE: It is hereby ordered that the findings of facts and conclusions of law contained in the Report dated August 6, 2012, subsequently adopted by the Commissioner with modifications on October 5, 2012, are hereby filed and made an official record of this office, and the within Final Agency Order incorporating the adopted Modified Report is hereby approved and effective this 5th day of October, 2012.


Jim Riesberg
Commissioner of Insurance

CERTIFICATE OF MAILING

I hereby certify that on the 5th day of October, 2012, I caused to be deposited the **FINAL AGENCY ORDER NO. O-13-028 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF THE NORTH RIVER INSURANCE COMPANY**, in the United States Mail via certified mailing with postage affixed and addressed to:

Mr. Douglas Libby, President
The North River Insurance Company
305 Madison Avenue
Morristown, NJ 07960-6117



Eleanor Coe
Market Regulation Administrator
Division of Insurance